

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

NEW METHOD WELLNESS, INC.,

Plaintiff,

v.

CIGNA HEALTHCARE OF
CALIFORNIA, INC.; CIGNA
BEHAVIORAL HEALTH
OF CALIFORNIA, INC.; and DOES 1-25

Defendants.

Case No. 8:17-cv-00844-AG-DFMx

Assigned to: Hon. Andrew J. Guilford

PROTECTIVE ORDER

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or private
3 information, such as protected health information,¹ requiring special protection from
4 public disclosure and from use for any purpose other than this litigation. Thus, the Court
5 enters this Protective Order. This Order does not confer blanket protections on all
6 disclosures or responses to discovery, and the protection it gives from public disclosure
7 and use extends only to the specific material entitled to confidential treatment under the
8 applicable legal principles. This Order does not automatically authorize the filing under
9 seal of material designated under this Order. Instead, the parties must comply with L.R.
10 79-5.1 if they seek to file anything under seal. This Order does not govern the use at
11 trial of material designated under this Order.

12 **2. DESIGNATING PROTECTED MATERIAL**

13 **2.1 Over-Designation Prohibited.** Any party or non-party who designates
14 information or items for protection under this Order as “CONFIDENTIAL” or
15 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” (a “designator”) must
16 only designate specific material that qualifies under the appropriate standards. To the
17 extent practicable, only those parts of documents, items, or oral or written
18 communications that require protection shall be designated. Designations with a higher
19 confidentiality level when a lower level would suffice are prohibited. Mass,
20 indiscriminate, or routinized designations are prohibited. Unjustified designations
21 expose the designator to sanctions, including the Court’s striking all confidentiality
22 designations made by that designator. Designation under this Order is allowed only if
23 the designation is necessary to protect material that, if disclosed to persons not
24 authorized to view it, would cause competitive or other recognized harm such as the
25 invasion of individuals’ privacy rights, including those rights set forth in the
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27 ¹ This Order is a HIPAA-compliant “qualified protective order” pursuant to 45 C.F.R.
28 § 164.512(e)(1)(ii),(v).

1 Confidentiality of Medical Information Act, California Civil Code §§ 56, *et seq.*, the
2 Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health
3 Information and Technology for Economic and Clinical Health Act (“HITECH”) and
4 45 C.F.R. §§ 164.512(e)(1)(iv)-(v) (the “HIPAA Privacy Rule”). Subject to the
5 requirements of HIPAA, HITECH and the HIPAA Privacy Rule, material may not be
6 designated if it has been made public, or if designation is otherwise unnecessary to
7 protect a secrecy interest. If a designator learns that information or items that it
8 designated for protection do not qualify for protection at all or do not qualify for the
9 level of protection initially asserted, that designator must promptly notify all parties that
10 it is withdrawing the mistaken designation.

11 **2.2 Manner and Timing of Designations.** Designation under this Order
12 requires the designator to affix the applicable legend (“CONFIDENTIAL” or
13 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that
14 contains protected material. For testimony given in deposition or other proceeding, the
15 designator shall specify all protected testimony and the level of protection being
16 asserted. It may make that designation during the deposition or proceeding, or may
17 invoke, on the record or by written notice to all parties on or before the next business
18 day, a right to have up to 21 days from the deposition or proceeding to make its
19 designation.

20 **2.2.1** A party or non-party that makes original documents or materials
21 available for inspection need not designate them for protection until after the
22 inspecting party has identified which material it would like copied and
23 produced. During the inspection and before the designation, all material shall
24 be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After
25 the inspecting party has identified the documents it wants copied and produced,
26 the producing party must designate the documents, or portions thereof, that
27 qualify for protection under this Order.
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1 **2.2.2** Parties shall give advance notice if they expect a deposition or
2 other proceeding to include designated material so that the other parties can
3 ensure that only authorized individuals are present at those proceedings when
4 such material is disclosed or used. The use of a document as an exhibit at a
5 deposition shall not in any way affect its designation. Transcripts containing
6 designated material shall have a legend on the title page noting the presence of
7 designated material, and the title page shall be followed by a list of all pages
8 (including line numbers as appropriate) that have been designated, and the level
9 of protection being asserted. The designator shall inform the court reporter of
10 these requirements. Any transcript that is prepared before the expiration of the
11 21-day period for designation shall be treated during that period as if it had been
12 designated **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY** unless
13 otherwise agreed. After the expiration of the 21-day period, the transcript shall
14 be treated only as actually designated.

15 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to designate
16 does not, standing alone, waive protection under this Order. Upon timely assertion or
17 correction of a designation, all recipients must make reasonable efforts to ensure that
18 the material is treated according to this Order.

19 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 All challenges to confidentiality designations shall proceed under L.R. 37-1
21 through L.R. 37-4.

22 **4. ACCESS TO DESIGNATED MATERIAL**

23 **4.1 Basic Principles.** A receiving party may use designated material only for
24 this litigation. Designated material may be disclosed only to the categories of persons
25 and under the conditions described in this Order.

26 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**
27 Unless otherwise ordered by the Court or permitted in writing by the designator, a
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1 receiving party may disclose any material designated CONFIDENTIAL only to:

2 **4.2.1** The receiving party's outside counsel of record in this action and
3 employees of outside counsel of record to whom disclosure is reasonably
4 necessary;

5 **4.2.2** The officers, directors, and employees of the receiving party to
6 whom disclosure is reasonably necessary, and who have signed the Agreement
7 To Be Bound (Exhibit A);

8 **4.2.3** Experts retained by the receiving party's outside counsel of record
9 to whom disclosure is reasonably necessary, and who have signed the
10 Agreement To Be Bound (Exhibit A);

11 **4.2.4** The Court and its personnel;

12 **4.2.5** Outside court reporters and their staff, professional jury or trial
13 consultants, and professional vendors to whom disclosure is reasonably
14 necessary, and who have signed the Agreement To Be Bound (Exhibit A);

15 **4.2.6** During their depositions, witnesses in the action to whom
16 disclosure is reasonably necessary and who have signed the Agreement To Be
17 Bound (Exhibit A); and

18 **4.2.7** The author or recipient of a document containing the material, or a
19 custodian or other person who otherwise possessed or knew the information.

20 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
21 **ONLY Material Without Further Approval.** Unless permitted in writing by the
22 designator, a receiving party may disclose material designated HIGHLY
23 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

24 **4.3.1** The receiving party's outside counsel of record in this action and
25 employees of outside counsel of record to whom it is reasonably necessary to
26 disclose the information;

27 **4.3.2** The Court and its personnel;

1 **4.3.3** Outside court reporters and their staff, professional jury or trial
2 consultants, and professional vendors to whom disclosure is reasonably
3 necessary, and who have signed the Agreement To Be Bound (Exhibit A); and

4 **4.3.4** The author or recipient of a document containing the material, or a
5 custodian or other person who otherwise possessed or knew the information.

6 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
7 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel or**
8 **Experts.** Unless agreed to in writing by the designator:

9 **4.4.1** A party seeking to disclose to in-house counsel any material
10 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
11 make a written request to the designator providing the full name of the in-house
12 counsel, the city and state of such counsel's residence, and such counsel's
13 current and reasonably foreseeable future primary job duties and responsibilities
14 in sufficient detail to determine present or potential involvement in any
15 competitive decision-making.

16 **4.4.2** A party seeking to disclose to an expert retained by outside counsel
17 of record any information or item that has been designated HIGHLY
18 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written
19 request to the designator that (1) identifies the general categories of HIGHLY
20 CONFIDENTIAL – ATTORNEY EYES ONLY information that the receiving
21 party seeks permission to disclose to the expert, (2) sets forth the full name of
22 the expert and the city and state of his or her primary residence, (3) attaches a
23 copy of the expert's current resume, (4) identifies the expert's current
24 employer(s), (5) identifies each person or entity from whom the expert has
25 received compensation or funding for work in his or her areas of expertise
26 (including in connection with litigation) in the past five years, and (6) identifies
27 (by name and number of the case, filing date, and location of court) any
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1 litigation where the expert has offered expert testimony, including by
2 declaration, report, or testimony at deposition or trial, in the past five years. If
3 the expert believes any of this information at (4) - (6) is subject to a
4 confidentiality obligation to a third party, then the expert should provide
5 whatever information the expert believes can be disclosed without violating any
6 confidentiality agreements, and the party seeking to disclose the information to
7 the expert shall be available to meet and confer with the designator regarding
8 any such confidentiality obligations.

9 **4.4.3** A party that makes a request and provides the information specified
10 in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the
11 identified in-house counsel or expert unless, within seven days of delivering the
12 request, the party receives a written objection from the designator providing
13 detailed grounds for the objection.

14 **4.4.4** All challenges to objections from the designator shall proceed
15 under L.R. 37-1 through L.R. 37-4.

16 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
17 **IN OTHER LITIGATION**

18 **5.1 Subpoenas and Court Orders.** This Order in no way excuses non-
19 compliance with a lawful subpoena or court order. The purpose of the duties described
20 in this section is to alert the interested parties to the existence of this Order and to give
21 the designator an opportunity to protect its confidentiality interests in the court where
22 the subpoena or order issued.

23 **5.2 Notification Requirement.** If a party is served with a subpoena or a court
24 order issued in other litigation that compels disclosure of any information or items
25 designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL –
26 ATTORNEY EYES ONLY, that party must:

27 **5.2.1** Promptly notify the designator in writing. Such notification shall
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1 include a copy of the subpoena or court order;

2 **5.2.2** Promptly notify in writing the party who caused the subpoena or
3 order to issue in the other litigation that some or all of the material covered by
4 the subpoena or order is subject to this Order. Such notification shall include a
5 copy of this Order; and

6 **5.2.3** Cooperate with all reasonable procedures sought by the designator
7 whose material may be affected.

8 **5.3 Wait For Resolution of Protective Order.** If the designator timely seeks
9 a protective order, the party served with the subpoena or court order shall not produce
10 any information designated in this action as CONFIDENTIAL or HIGHLY
11 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the court
12 where the subpoena or order issued, unless the party has obtained the designator's
13 permission. The designator shall bear the burden and expense of seeking protection of
14 its confidential material in that court.

15 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
17 designated material to any person or in any circumstance not authorized under this
18 Order, it must immediately (1) notify in writing the designator of the unauthorized
19 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated
20 material, (3) inform the person or persons to whom unauthorized disclosures were made
21 of all the terms of this Order, and (4) use reasonable efforts to have such person or
22 persons execute the Agreement To Be Bound (Exhibit A).

23 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
24 **PROTECTED MATERIAL**

25 When a producing party gives notice that certain inadvertently produced material
26 is subject to a claim of privilege or other protection, the obligations of the receiving
27 parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
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1 is not intended to modify whatever procedure may be established in an e-discovery
2 order that provides for production without prior privilege review pursuant to Federal
3 Rule of Evidence 502(d) and (e).

4 **8. FILING UNDER SEAL**

5 Without written permission from the designator or a Court order, a party may not
6 file in the public record in this action any designated material. A party seeking to file
7 under seal any designated material must comply with L.R. 79-5.1. Filings may be made
8 under seal only pursuant to a court order authorizing the sealing of the specific material
9 at issue. The fact that a document has been designated under this Order is insufficient
10 to justify filing under seal. Instead, parties must explain the basis for confidentiality of
11 each document sought to be filed under seal. Because a party other than the designator
12 will often be seeking to file designated material, cooperation between the parties in
13 preparing, and in reducing the number and extent of, requests for under seal filing is
14 essential. If a *receiving party's* request to file designated material under seal pursuant
15 to L.R. 79-5.1 is denied by the Court, then the receiving party *may file the material in*
16 *the public record* unless (1) *the designator* seeks reconsideration within four days of
17 the denial, or (2) as otherwise instructed by the Court.

18 **9. FINAL DISPOSITION**

19 Within 60 days after the final disposition of this action, each party shall return all
20 designated material to the designator or destroy such material, including all copies,
21 abstracts, compilations, summaries, and any other format reproducing or capturing any
22 designated material. The receiving party must submit a written certification to the
23 designator by the 60-day deadline that (1) identifies (by category, where appropriate)
24 all the designated material that was returned or destroyed, and (2) affirms that the
25 receiving party has not retained any copies, abstracts, compilations, summaries, or any
26 other format reproducing or capturing any of the designated material. This provision
27 shall not prevent counsel from retaining an archival copy of all pleadings, motion
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1 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
2 deposition and trial exhibits, expert reports, attorney work product, and consultant and
3 expert work product, even if such materials contain designated material. Any such
4 archival copies remain subject to this Order.

5 **IT IS SO ORDERED.**

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7 DATED: October 20, 2017

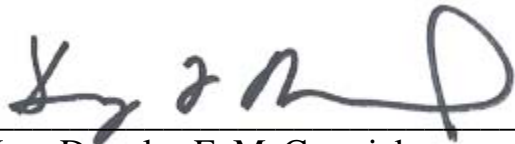
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9 _____
10 Hon. Douglas F. McCormick
11 United States Magistrate Judge
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EXHIBIT A

AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Protective Order that was
issued by the United States District Court for the Central District of California on [date]
in the case of *New Method Wellness, Inc. v. Cigna Healthcare of California, et al.*, Case
No. 8:17-CV-008844-AG-DFMx. I agree to comply with and to be bound by all the
terms of this Protective Order, and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment for contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Protective Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing this Order, even if such
enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed:

Printed name: _____
[Printed name]

Signature: _____
[Signature]